IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL APPEAL NO.2292 SB OF 2003

DATE OF DECISION: DECEMBER 07, 2007

Shiv Narain Sharma

.....Appellant

VERSUS

State of Haryana

....Respondent

CRIMINAL APPEAL NO.2242 SB OF 2003

Phool Kumar

.....Appellant

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. Baldev Singh, Sr.Advocate with
Mr. Arshvinder Singh, Advocate,
for the appellant.
(In Crl.Appeal No.2292 SB of 2003)

Mr. Jitender Dhanda, Advocate,
for the appellant.
(In Crl.Appeal No.2242 SB of 2003)

Mr. Yashwinder Singh, AAG, Haryana,
for the State.

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RANJIT SINGH, J.

Appellants Shiv Narain Sharma and Phool Kumar, serving as Inspector and Clerk respectively, in Food and Supplies Department of the State of Haryana, have impugned their conviction and award of sentence of 5 years RI coupled with fine of Rs.30,000/- for an offence under Section 7/13 of the Prevention of Corruption Act, 1988 by filing two separate appeals, which are being disposed of by this common order.

Through the abovesaid appeals, the appellants have challenged their conviction on number of grounds, prime one being that even the complainant, Krishan Kumar (PW11) and Raman Gulati (PW12), a shadow witness, did not support the prosecution case but the result still was their conviction.

The prosecution case was set in motion on an application filed by Krishan Kumar (PW11) before Superintendent of Police, Rohtak. Allegation was that appellant Shiv Narain Sharma had asked for illegal gratification from him. PW12, describing himself as a Cashier of Bill-cum-Payment Agent (for short, “BCPA”) and a shop-keeper in the Grain Market, Rohtak, has alleged that he had paid a bribe of Rs.2,85,520/- to the Food and Supplies Department for clearance of wheat crop. Strange, it may be to notice that the allegation is of payment to the Food and Supplies Department and not to any individual. The complainant further alleges that Food and Supplies Department demanded a sum of Rs.46,500/- more by saying that they had received only a sum of Rs.2,39,000/-, the demanded sum being balance of the bribe statedly paid. Saying so,

the complainant filed an application that appellant, Inspector Shiv Narain Sharma, Food and Civil Supplies, came present to his shop and started harassing him. Complainant further disclosed in the application that he was not willing to pay the bribe and wanted appellant, Shiv Narain Sharma, to be arrested. This application given to Superintendent of Police was forwarded to Deputy Superintendent of Police, City Rohtak. DSP Kartar Singh then moved an application, Ex.PC/1 before Deputy Commissioner, Rohtak, for deputing a Magistrate to accompany the raiding party. Sub Divisional Magistrate Yashvinder Singh was accordingly deputed for the purpose. Before starting for the raid, the complainant produced a sum of Rs.46,500/- before DSP Kartar Singh (PW13). The bundle of notes so produced was signed by SDM Yashvinder Singh (PW2). Phenolphthalein powder was applied to the currency notes and these were handed over to the complainant for passing it on to appellant Shiv Narain Sharma. A memo Ex.PD was prepared in this regard and was attested by the witnesses. At that time, the complainant was also statedly accompanied by Raman Gulati (PW12). Memo was also sent to police station for registering a formal FIR, which was done. The complainant and the shadow witnesses were briefed to give a signal to the police party after handing over the money treated with the powder. It is in the evidence of the complainant that appellant Shiv Narain Sharma was sitting at his shop, when he went back after arranging the trap. The complainant statedly placed this tainted money on his GADDI (sitting place). Appellant Shiv Narain Sharma allegedly lifted this money and started counting. The complainant then came out of the shop and gave signal to the police party, which

had earlier reached near the place in a private vehicle. The raid was conducted and upon search of Shiv Narain Sharma, a sum of Rs.30,000/- was recovered from the right side pocket of his trouser. The numbers of the currency notes tallied with the numbers mentioned in the memo. Strangely, the evidence shows that the notes were washed and thereupon, the water containing sodium carbonate turned pink. The same were put in the nips separately as samples and taken into possession. The currency notes were also taken into possession vide memo Ex.PE. Appellant Shiv Narain Sharma was also made to wash his hands, when the colour of water turned pink. This was again put into two separate nips and sealed with a seal bearing `KS' and taken into possession, on being duly attested by the witnesses. Though earlier, name of appellant Phool Kumar is not mentioned in any manner but is disclosed in the evidence of DSP Kartar Singh (PW13) and SDM Yashvinder Singh (PW2) that he was present and upon his search, a sum of Rs.16,500/- was recovered from him. The number of these currency notes when compared with the memo also tallied. These currency notes were also statedly washed when these turned pink. Identical procedure was followed in putting the solution into nips and preserving these as a matter of evidence. Appellant Phool Kumar was also made to wash his hands with water containing sodium carbonate, when the colour of the water turned pink. This was again sealed separately in a nip as a sample and secured with seal `KS', besides being taken in possession vide memo Ex.PG. The right side pocket of trouser of Shiv Narain Sharma was washed to get similar result whereby the solution turned pink. This was also preserved as a

sample vide memo Ex.PK. The trouser was taken in possession and sealed. Similar procedure was followed for washing the pocket of trouser of Phool Kumar as well. The seal was then handed over to PW2 (SDM Yashvinder). On completion of investigation, challan was submitted and the appellants put to trial. Both the appellants were charged under Section 7/13 of the Prevention of Corruption Act.

In support of its case, the prosecution examined as many as 13 witnesses, which included complainant, shadow witness, DSP and the S.D.M., who were present at the time of alleged raid. On conclusion of prosecution evidence, the appellants were confronted with the evidence and the circumstances appearing in evidence against them, as is the purview of Section 313 Cr.P.C. They denied the prosecution evidence and the allegations made against them. Both the appellants pleaded their false implication. Appellant Shiv Narain Sharma when asked, stated in defence:-

> "I am innocent. The procurement of wheat ended on 31.05.2001. I had nothing to do with procurement after that. Consequent upon my transfer from there, I had handed over the charge to Satbir Singh Mor, Inspector on 12.7.2001. Thereafter I was deputed for distribution of Food Grains to fair price shops. On 21.7.2001, I had nothing to do with the procurement of wheat. At the time of handing over and taking over the charge, there was shortage of 2258 once used empty bags which were due from PW Krishan Kumar Goel (complainant) who was functioning as B.C.P.A. Said 2258 once used empty bags were not to be accepted back, but instead price thereof

was to be recovered as per order of D.F.S.C. The prices of those recovered was to be deposited into government account. Krishan Kumar Goel was, however, evading the said due recovery.

On 20.7.2001, Krishan Kumar Goel, complainant was again asked for the recovery of the prices/amount on account of 2258 once used empty bags. He replied that he would be making cash payment of them on 21.7.2001. On 21.7.2001, I alongwith Phool Kumar, clerk of Food Supply Department contacted Krishan Kumar Goel (complainant) at his shop Jagdamba Trading Anaj Mandi, Rohtak about 12.00/12.30 p.m. for effecting recovery of the price amount of 2258 once used empty bags. The complainant told us that he had forgotten to bring the amount from his home and that he would be bringing the amount. He told us to wait till then. Around 2.00/2.30 p.m., he came there and placed some currency notes on the Gaddi of shop and immediately rushed out. Soon thereafter, police came in and DSP picked up the cash amount from the Gaddi. Police forcibly took me and Phool Kumar to police station, City, Rohtak. There we were framed up in a false case by fabricating evidence. I never picked up never accepted any bribe money nor ever made any such demand. It was planted on me by DSP at the instance of Krishan Kumar with whom, he had personal relations. Krishan Kumar Goel is a man of dubious character and bore an old grudge and as such

was inimical towards me. I am innocent. I have an unblemished service record of 38 years and due to retire on 30.11.2003."

Appellant Phool Kumar, however, while pleading his innocence stated that nothing was recovered from his possession. He further brought out that he was working in the Distribution Section of the Food and Supplies Office from the beginning of July 2001. As per him, DSP Kartar Singh approached him to prepare a bogus ration card for some one, which he refused. Annoyed on account of this, the appellant claims that he was falsely implicated. In support of their stand, the appellants examined one witness in defence. In addition, they have also sought support from the version given by Mrs.Vijay Laxmi (PW3), Clerk, Food and Supplies Department, Satbir Singh (PW4) and Dilawar Singh (PW8), working as Inspector and District Food and Supplies Officer respectively in the office of Food and Civil Supplies.

Mr.Jatinder Dhanda, appearing for appellant Phool Kumar has taken me through the evidence of relevant witnesses. He contends that the prosecution has not got anything to seek support for its case as even the complainant and the shadow witness in this case turned hostile. The counsel says that the evidence of DSP Kartar Singh (PW13) and SDM Yashvinder Singh (PW2), which may be referred to by the prosecution, would be of no avail as they both are only witness to the recovery and not to the demand and acceptance. They both are not witness to the actual happenings, which alone would not be enough to maintain the conviction of the appellants. It is further highlighted that from the version of the

complainant and the shadow witness, no evidence of demand of bribe or acceptance as such is made out. The State counsel, on the other hand, says that the evidence of DSP and SDM Yashvinder would be enough to base the conviction in this case and as such, no interference may be called for in the order of conviction of the appellants on the ground that complainant and shadow witness are not supporting the case. These witnesses, as per the State counsel, have not come out with the truth. It is otherwise not seriously disputed that the complainant and the shadow witness did not support the prosecution and were declared hostile and this would be a serious hurdle before the prosecution.

Concededly, the case was set in motion by complainant Krishan Kumar (PW11). It is rather surprising to notice that PW11 does not seem to be carrying any compunction in openly professing that he had paid a sum of Rs.2,39,520/- as a bribe to the Food and Supplies Department. Incidentally, this bribe was not to the appellants even as per the stand of the complainant. How could he openly say so and not invite allegation of being a bribe giver which is also an offence. The complainant in this case, by so stating, clearly seems to be an abetting the offence and is not the one who is reluctant bribe giver. He is the one who had already paid bribe to the department and arranged this trap when additional sum is demanded. Name of appellant Shiv Narain Sharma has been brought in on the ground that he demanded a sum of Rs.46,500/- more as earlier amount paid was found to be Rs.2,39,000/- and not 2,85,520/- as stated. It may need a notice here that a bribe deal is usually a benefit both syndrome. Association of such a witness in a

pre-arranged plan would make him interested witness who would be rather keen to see success of his trap. His evidence, as such, is to be tested in the same way as that of any other interested witness. The courts can generally insist on some corroboration of such evidence before accepting the same. Here the situation is entirely different. The complainant has majorally gone back from his version before the Court. Whatever little support he has lent to the prosecution is rather half hearted and would not advance the case of prosecution in any manner.

Having deposed the manner in which complainant (PW11) gave application and how he produced the amount of Rs.46,500/-, PW11 went on to state about the manner in which he paid this amount to the appellant. His version in this regard is “I came at my shop with my son on a scooter. Police also came there in a private vehicle. Shri S.N.Sharma was sitting in my shop. My elder son was also sitting there. I put the notes on the Gaddi of the shop in front of Sh.S.N.Sharma and he lifted the notes and started counting the same and at that time Raman Gulati was also there i.e. sitting in the shop.” PW11 then allegedly came out of the shop to give signal to the raiding party. He has further deposed that police, on reaching the scene, demanded money from Sh.Shiv Narain Sharma. DSP Kartar Singh(PW13) and SDM Yashvinder (PW2) were perhaps not part of this police party and came there a little later. The complainant thereafter has not provided any support to the case of the prosecution by pleading that he is a patient of hyper-tension and was made to sleep on the Gaddi. Strangely, he states that the police party took the accused on seeing the crowd and he was called to the

Police Station only on the next day., when he went there and signed on some papers. PW11 was then got declared hostile by the prosecution and questioned by the Public Prosecutor. He damaged the prosecution case no ends. In response to a direct suggestion, PW11 denied even about the presence of appellant Phool Kumar at the shop. The complainant denied that appellant Phool Kumar had demanded any money from him. Rather, he voluntarily disclosed that Phool Kumar, appellant, was not present at the shop at all. Continuing with his damage to the prosecution story, the complainant said "I had not seen recovery of the tainted money from accused S.N.Sharma. Volunteered I lost consciousness due to tension. It is correct that recovery memo Ex.PE bears my signatures. Volunteered due to high B.P. I had lied down and my signatures were obtained on the memo on the next day." He also denied the suggestion that sum of Rs.30,000/- was recovered from appellant Shiv Narain Sharma in his presence or that he had signed the recovery memo. He further deposed that hand wash and currency notes wash was not done at his shop, while denying that this was done in his presence. PW11 even denied the other suggestions relating to taking of the samples etc. In short, he almost denied every suggestion put to him on the basis of his previous statement.

As if this was not enough, the shadow witness was not in any manner evasive in being hostile to the prosecution. His evidence is to the effect that he had gone to the new grain market as usual, when the shop of Krishan Kumar, complainant, was raided by DSP Kartar Singh and the SDM. As per this witness, he was crossing in front of the shop when he noticed that complainant Krishan Kumar

Goyal had fainted inside the shop. He then resorted to hear-say by saying that he heard people telling that some raid was on and some one was arrested. Continuing with his crusade against the prosecution, the witness stated that he did not know who was arrested and that no money was given in his presence and further that nothing was recovered in his presence from the appellants, whom he saw in the Court. He was also got declared hostile by prosecution and cross-examined . Except for drawing his attention to his previous statement, which he denied to be incorrect, prosecution did nothing else to bring out anything which could support its case. The witness, though admitted that his signatures appeared on various memos i.e. Exs.PD, PE, PF, PG, PH, PJ, PK, PL. PM, PN, PO but qualified it by saying that he was not allowed to go through these memos, which were already written and copies of these were also not supplied to him. To complete the rituals, he denied the suggestion of the prosecution that he was deposing falsely. Only one question was addressed to this witness by the counsel representing the appellants, in response to which he stated that he had not seen the accused present in the court in the grain market on the day of occurrence. This of course was a damaging punch leaving the prosecution bleeding through its nose.

In this state of evidence, obviously, the prosecution was bound to fall back to the evidence of DSP Kartar Singh (PW13) and SDM Yashvinder (PW2). These two witnesses are not witness to the happening of bribe giving and its acceptance. DSP Kartar Singh (PW13) has deposed about the procedure and manner in which he treated the currency notes and other arrangements as are noticed

above. PW13 then stated that he had hidden himself behind the wheat bags to wait for signal to be given by Raman Gulati (PW12). PW13 deposed about having gone inside the shop on a signal given to him, where he found both the appellants sitting. He has then testified about the search of Shiv Narain Sharma conducted by him and the recovery of Rs.30,000/-, washing of hands, notes and trousers etc. and preserving all the samples of water, which turned pink. PW13 has also deposed about recovery of a sum of Rs.16,500/- from the person of Phool Kumar and the procedure that he followed for preserving the samples, washing the currency notes etc. It is seen that PW13 is a witness only to the recovery of this amount and so is the state of evidence given by SDM Yashvinder (PW2). Having deposed about the manner in which he was detailed, PW2 testified that complainant had put Rs.46,500/- on the table, on which PW2 put his initials. He has also deposed about the currency notes being treated with phenolphthalein powder. Ram Kumar (infact it should be Raman Gulati), according to PW2, was the shadow witness. He has given the detail of the happenings that took place at the shop and the search of both the appellants, leading to recovery of currency notes.

It is clear that the complainant and shadow witness have not supported the prosecution at all and rather they both were hostile to the prosecution. These two witnesses alone could have proved the demand and acceptance of the bribe. There is no evidence of demand by the appellants on the day of the incident. The demand, if any, was a day prior to the incident and except for complainant (PW11), no one else lend support to this aspect. It is rather unsafe to

place reliance on his version. He has conducted himself with total discredit.

A perusal of the complainant's evidence whatever be its worth, would clearly show that on the day of incident, there was no demand from appellant Shiv Narain Sharma. The position in respect of appellant Phool Kumar is altogether different. According to the complainant, he was even not present at the scene on the day of incident. Even if the evidence of the complainant is accepted to the effect that appellant Shiv Narain Sharma had made some demand for the balance amount, which was received less, then there is no other evidence on record to support the same. The shadow witness is at a total tangent with the case of prosecution. He even did not say if he was detailed as a shadow witness. According to him, he appeared at the scene by chance and happened to see the raid etc. Thus, the prosecution is left with the evidence of PW13 and PW2. They are not witnesses to the demand raised by the appellants. They have only proved the recovery of the amount from both the appellants. Obviously, this amount was a tainted currency notes and were statedly recovered from the possession of both the appellants. That evidence alone, in my view, would not be safe/sufficient to convict the appellants.

Counsel for the appellants have highlighted some discrepancies in the statements of PW13 and PW2. According to PW2, they finished the entire proceedings around 5 PM whereas PW13 has deposed that they were free by 10/10.30 PM. There is also a difference in their version in regard to the place from where the appellants were taken in custody. Highlighting these aspects,

counsel for the appellants would say that it will create doubt in regard to presence of PW2 as otherwise there can not be much explanation for this wide variation in regard to the time of raid, search and completion thereof.

The aspect of recovery, in my view, is well explained by the defence. Defence projected by appellant Shiv Narain Sharma, is quoted in detail above. This is to the effect that the appellant had already handed over the charge, when there was a shortage of 2258 once used empty bags was found. This shortage was due from the complainant, who was functioning as BCPA. These empty bags were not accepted and instead District Food and Supplies Controller had ordered that the price of these be recovered from the complainant and deposited in the Government account. The case of the appellant, Shiv Narain Sharma further is that he had asked the complainant to pay the amount of used bags and in this context he had contacted the complainant on 21.7.2001. Appellant went on to state that the complainant had made them to sit at the shop, saying that he forgot to bring the amount from his home and left the place asking them to wait at the shop. He returned to hand over the currency notes, which he kept at the ***Gaddi*** of the shop and thereafter rushed out. The police party, including DSP then reached the place and recovered the cash from ***Gaddi.*** The appellant would further plead that they were forcibly taken to the police station and involved in this false and fabricated case. This stand of the defence is not on the basis of their respective statements but is sufficiently supported by the evidence on record. PW3 Mrs.Vijay Laxmi, Clerk in the Food and Supplies Department, has deposed about handing over of charge by appellant

Shiv Narain Sharma to Satbir, which was also signed by AFSO Dilawar Singh. She also deposed about appellant Phool Kumar working in the Distribution Section and that he was deputed to prepare the ration cards. Satbir Singh (PW4), Inspector, in the Food and Supplies Department, gave evidence about the shortage of 2258 bags. These used bags, according to PW-4, were to be recovered by the Department, as per order of District Food and Supplies Controller. These bags were stated to be short on the charge of appellant Shiv Narain Sharma and accordingly, he was to recover the price of these bags. This witness further deposed that appellant Shiv Narain Sharma had handed over the charge to him (PW4) and thereafter was deputed for distribution of food grains. The appellant accordingly had nothing to do with the procurement. The defence would then refer to the evidence of Dilawar Singh (PW8), who was District Food and Supplies Officer. While under cross-examination, this witness admitted that he was Incharge of procurement and distribution work during the year 2001. According to him (PW8), 31.5.2001 was the last date of purchase and passing of wheat. He also brought out that 2258 bags were due from Krishan Kumar Goyal, the complainant. As per PW8 these bags were not to be accepted but cash was to be deposited with the Government and recovery was to be effected by the BCPA. He also agreed with the suggestion that appellant Shiv Narain Sharma was directed by the Department to deposit this amount. He has not given only an oral account in this regard but is supported by a written document, which is letter, Ex.DD. PW8 stated “I had checked the premises of complainant K.K.Goyal and some other dealers and found shortage

of wheat purchased by the Government from some dealers. Wheat purchased by the Government from the complainant was also short by 4 quintal 62 Kgs. 720 Grams. It is correct that I had directed accused S.N.Sharma to effect recovery from all such dealer who had supplied less wheat to the Government."

Viewed in the context of this evidence, which came on record through prosecution witnesses, the defence projected by the appellants would sound really probable. The prosecution is not seen to have ruled out the possibility of any false implication of the appellants. The appellants may have demanded this sum as a bribe but to succeed, it may be true is not sufficient. In order to succeed, the prosecution has to show that whatever is urged, must be true and nothing less than that would suffice. On the other hand, the defence would succeed by showing preponderance of probabilities in their favour. If two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede the existence of reasonable doubt. Thus, it can be said that defence projected by the appellants is probable. Rather it would sound highly probable. The defence case is seeking support from the prosecution evidence. May be that these witnesses are from the Department, but they have not given only the oral account but were able to support their version on the basis of existing documents on record. It is probable to say that the appellants, who were not concerned with the procurement, were asked to effect recovery of the shortages etc. from all the dealers. The demand of illegal gratification having not been fully established even from the evidence of the complainant, it would rather be unsafe to hold that the prosecution had established its case

beyond reasonable doubt. The appellants could well have gone to the complainant in connection with the recovery, for which he was detailed. The money even if proved to be recovered from the appellant, can easily be explained as an amount which he had asked for and was handed over to him as being a recovery of shortage of bags etc. It may also need a notice that the demand even as projected by the complainant is not by the appellants but is from and for the Department. This may also read in tune with the assertion of the defence that the appellants were detailed to collect the amount, which was due as recovery from various dealers. The defence case is, as such, well probalised and it would succeed on preponderance of probabilities. On the other hand, the prosecution seems to have failed to prove its case to its hilt. There is no evidence, proving demand by the appellants. The demand of money as a bribe is also highly doubtful. The only aspect of recovery having been made from the appellants would be totally unsafe to base their conviction under Sections 7 and13 of the Prevention of Corruption Act.

A fact of significance which can be noticed is that even the currency notes were also washed as deposed by the witnesses. How it is possible is not understood? If indeed this was done, then it would cause another dent to prosecution case. The evidence of solution turning pink would be put doubt as this may well be because of washing of currency notes rather than hands or pocket of trouser etc.

Mr.Baldev Singh, learned senior counsel, has drawn my attention to the case of ***Subash Parbat Sonvane Vs. State of Gujarat,***, 2003 (2) RCR (Criminal) 541. Hon'ble Supreme Court

observed in this case that mere acceptance of money without there being any other evidence would not be sufficient for convicting the accused under Section 13(1)(d)(i). By making reference to various other judgments, the Hon'ble Supreme Court has held as under:-

> “10. In the background of aforesaid settled legal position, we would now refer to the relevant part of the evidence. Before the trial Court, it was submitted by the learned A.P.P. that complainant has not supported the prosecution case on main ingredients of demand and acceptance and was treated hostile. In cross-examination also, he has not supported the prosecution version on demand or acceptance of the amount. The trial Court has also observed that the complainant deliberately does not support on the points of demand and acceptance. However, the Court relied upon the evidence of panch Shailesh Devshankar Pandya (P.W.2). We were taken through the evidence of P.W.2-Pandya and from his evidence, it is difficult to find out any statement made by him that accused demanded any amount from the complainant. The relevant part of the evidence of this witness suggests that when the prosecution party went at the police chowki, accused asked the complainant as to why he had come there at that time? To that, complainant replied that he was waiting since One O'clock and that he has brought one witness to be

> examined. Accused informed him to come in the evening as his writer was not present. When the accused started to go towards toilet, the complainant followed him and he gave something from his pocket to the accused who took the same and put that in his pocket. From this evidence, it cannot be inferred that accused demanded any amount from the complainant or that he had obtained the same. It is apparent that the trial Court and the High Court misread the evidence of P.W.2 and held that there was demand by the accused and the amount was paid to him by the complainant, it was unreasonable to hold that accused demanded money from the complainant. Complainant denied the said story and P.W.2 had not stated so."

In this case also, there is no evidence of demand and acceptance. The complainant or the shadow witness who could have supported this part of the prosecution case are totally against the prosecution and were declared hostile. The evidence of shadow witness is of no assistance to the prosecution as he has completely turned away from the prosecution case. Rather, in this case, there is a valid and probable explanation offered by the defence, which can explain the recovery of the amount, even if it be from the persons of the appellants.

I am, thus, of the considered view that the prosecution in this case has failed to prove the case against the appellants. The

conviction of the appellants, as recorded by the trial Court can not be sustained. The same is accordingly set-aside. The appeals are accepted. The appellants would be released of the consequences of this trial. Their bail bonds and surety bonds would stand discharged.

December 07,2007 **(RANJIT SINGH)**
khurmi **JUDGE**